

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

UNITED STATES OF AMERICA §
Vs. § CRIMINAL ACTION NO. 6:09CR18
ERIC FERNANDO REYES §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

On July 15, 2009, the Court referred ancillary forfeiture proceedings in the above-styled case to the undersigned. Specifically, the Court referred: (1) D-1 CAPITAL, LP'S Petition Claiming an Interest in Property (document [#136](#)); (2) John Ealba's Petition Claiming Interest in Property (document [#170](#)); (3) Erika Reyes's Petition Claiming Interest in Property (document [#171](#)); (4) Erika Reyes's Petition Claiming Interest in Property (document [#172](#)); (5) Brenda Griego's Petition Claiming Interest in Property (document [#173](#)); (6) Evangelina Serrato's Petition Claiming Interest in Property (document [#174](#)); and (7) Victor Dominguez's Petition Claiming Interest in Property (document [#175](#)).

These ancillary forfeiture proceedings were referred to the undersigned for a hearing and proposed findings of fact and recommendations as to their disposition. On October 27, 2009, the Government filed a Motion to Dismiss Petition of Brenda Griego (document [#221](#)). In her Petition Claiming Interest in Property, Brenda Griego claims an ownership interest in a 1987 Monte Carlo. In its motion to dismiss, the Government asserts that Brenda Griego does not hold title to the 1987 Monte Carlo. To date, no response has been filed by Brenda Griego.

Pursuant to an Order entered on September 9, 2009, this matter was set for a hearing to be conducted on December 17, 2009 concerning the above-referenced ancillary forfeiture proceedings, including the claim filed by Brenda Griego. The Court received an acknowledgment of receipt card on October 14, 2009 revealing that the Order was delivered to Brenda Griego's last known address on October 9, 2009.

A third-party seeking amendment of a forfeiture order must show by a preponderance of the evidence:

- (A) the petitioner has a legal right, title, or interest in the property, and such right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
- (B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

21 U.S.C. § 853(n)(6). In this case, Brenda Griego has not shown that she has a legal right, title or interest in the property at issue. Rather, the Government has shown that Brenda Griego is not the registered owner of the subject vehicle. Brenda Griego did not respond to the motion to dismiss and did not appear for the hearing concerning this matter. Accordingly, the petition filed by Brenda Griego should be dismissed.

Recommendation

It is recommended that the Government's Motion to Dismiss Petition of Brenda Griego (document [#221](#)) be granted and that the petition of Brenda Griego filed in response to the Preliminary Order of Forfeiture involving a 1987 Purple Chevrolet Monte Carlo Custom, VIN

1G1GZ11Z8HP141336, License Plate LWC222 be dismissed.

Within fourteen days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within ten days after service shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Assn.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So **ORDERED** and **SIGNED** this **21** day of **December, 2009**.


JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE